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DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

SOUTHERN RY. CO. v. COMMONWEALTH.

Sept. 18, 1920.

[105 S. E. 65.]

1. Railroads (§ 60*)—Change of Location of Station May Constitute "Abandonment" within Statute; "Abandon."—Within Code 1904, § 1294d, cl. 48, prohibiting the abandonment of railroad stations without written consent of the Corporation Commission, changes of site from one point to another in the same community may involve the rights of the public to so considerable a degree and affect them so prejudicially as to be regarded as abandonments rather than relocations remitted solely to the discretion of the company; "abandon" meaning to give up or to cease to use.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Abandon; Abandonment.]

[Ed. Note.—For other cases see 15 Va.-W. Va. Enc. Dig. 223.]

2. Railroads (§ 60*)—Factors Determining Abandonment of Station.—Among determining factors of an inquiry whether a given removal of a railroad station is an abandonment or a relocation are the distance to which the station is removed, the number of patrons prejudicially affected, and the extent of their injury or damage; removal to a considerable distance accompanied by decided inconveniences to a large proportion of the community being treated as an abandonment, while minor changes causing but slight inconvenience will be treated as relocations.

3. Railroads (§ 60*)—Corporation Commission Held to Have Jurisdiction Concerning Change of Location of Station.—The proposed removal of a railroad station to a point 1,475 feet from the old site and on the opposite side of the track held to authorize the Corporation Commission, on the complaint of citizens, to take jurisdiction and supervise the selection of a new site.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

4. Railroads (§ 60*)—Abandonment of Station Because of Elevation of Tracks Not Abandonment because of Change of Location of Road.—A change in the location of a railroad station necessitated by the elevation of the tracks practically on the same right of way

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

was not within the proviso of Code 1904, § 1294d, cl. 48, excepting the abandonment of stations because of changes in the location of the line from the requirement for written consent of the Corporation Commission, especially in view of section 1105f, cl. 19, relative to changes in the location of the line of road.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

5. Railroads (§ 60*)—Corporation Commission Has Jurisdiction to Direct Establishment of New Station in Lieu of One Abandoned Because of Change of Road.—Under Code 1904, § 1105f, cl. 19, requiring the establishment of new railroad stations in lieu of those abandoned, because of a change in the location of the road, and section 1313a, cl. 16, authorizing the Corporation Commission to require corporations to perform public duties imposed by law, the commission had jurisdiction over the establishment of a new station in lieu of one so abandoned.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

6. Railroads (§ 60*)—Corporation Commission May Supervise Selection of Site for Station in Case of Relocation.—Though the statutes conferring powers on the Corporation Commission do not use the word "relocation," it has power, under Const. 1902, § 156b, to supervise the relocation of a station and determine which of two or more sites is the most desirable.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

7. Railroads (§ 60*)—Site of Relocated Station Must Be Convenient and Accessible.—In relocating a railroad station, the site selected should be the most convenient, accessible, practicable, and desirable one, if a choice has to be made.

8. Railroads (§ 9 (1*))—Supervision of Obligations within Jurisdiction of Corporation Commission.—Obligations imposed upon railway corporations, whether by Constitution, statutes, or the common law, are obligations imposed by law, the supervision of the discharge of which is committed to the Corporation Commission.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

9. Railroads (§ 58*)—Duty to Provide Reasonable Depot Facilities.—A railway company is charged with the duty to provide the public with reasonable depot facilities.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 568.]

10. Railroads (§ 60*)—Corporation Commission's Order as to Site of New Station Held Supported by Evidence.—An order of the Corporation Commission requiring the construction of a new railway station, in lieu of one abandoned because of an elevation of the tracks, on a site other than that selected by the company, held supported by the evidence as to the comparative convenience of the two sites, and not plainly wrong.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

11. Railroads (§ 60*)—Neither Interests of Company Nor of Community Paramount in Selecting Site of Station.—In the selection of a site for a new railroad station in lieu of one abandoned, neither the interests of the community nor those of the company are to be regarded as paramount.

12. Railroads (§ 9 (2)*)—Particular Weight to Be Given Commission's Finding as to Site for Station Where It Visited Locality.—Under the constitutional provision that the action of the Corporation Commission appealed from shall be regarded as prima facie just, reasonable, and correct, particular weight should be attached to its findings concerning the selection of a site for a new railroad station in lieu of one abandoned where the commission visited the locality concerned.

13. Railroads (§ 60*)—Expenditures on New Station after Complaint from Citizens Held at Company's Peril.—Where a member of the Corporation Commission, on receipt of a complaint from citizens concerning the site selected by a railroad company for a new station in lieu of one abandoned, requested the company to do nothing further until the commission had an opportunity for investigation, any subsequent expenditures on the site selected by the company was at its own peril.

Appeal from State Corporation Commission.

Proceedings before the Corporation Commission against the Southern Railway Company. From an order of the Commission, the Railway Company appeals. Affirmed and remanded.

R. B. Tunstall, of Norfolk, and *George E. Walker*, of Charlottesville, for appellant.

Ino. R. Saunders, *Atty. Gen.*, *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, and *R. T. W. Duke, Jr.*, of Charlottesville, for the Commonwealth.

CARTER COAL CO. *v.* BATES.

Sept. 16, 1920.

[105 S. E. 77.]

1. Limitation of Actions (§§ 119 (6), 122*)—New Process after Return Day, but before Quashing, Held "Alias Process" Not within Statute.—Though Code 1887, § 3221, provides for the issuance of alias or other process at the return day of any process if not returned executed, where the original process is valid, but the service or return is defective, it is sufficient to keep the action pending without any

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